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No. 197

IN THE

Supreme Court of the United States

TERM, 196 4

No. 1233

DIAMANTE URGA,
Petitioner,
-vs-
STATE OF FLORIDA,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Of Counsel:
FRANK RAGANO & RAYMOND E. LA PORTE
419 Pierce Street
Tampa, Florida
Attorneys for Petitioner

JOHN PARKHILL
308 Tampa Street
Tampa, Florida
Attorney for Petitioner

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TO THE HONORABLES, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that this Court grant rehearing of its order of October 12, 1964, denying the petition for writ of certiorari and that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Florida in the above-entitled case as prayed for in the petition filed June 19, 1964, herein

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

1.) Cross-examination is one of the greatest instrumentalities for good known to the law and one of the best vehicles known to the trial lawyer to get at the truth.

The cross-examination of the complaining witness against the petitioner was not only unduly prohibited but, for all practical purposes, foreclosed on the question of the credibility of the complaining witness.

The question of the credibility of this witness was of the utmost importance and materiality since this complaining witness, Helen T. Christman, was the sole witness of any consequence to implicate the petitioner with the alleged miscarriage.

Not only was the attorney for petitioner restricted in his cross-examination of this witness but it also clearly appears from the record (Tr. 104-107) that counsel had no opportunity to talk to this witness prior to the time counsel attempted to cross-examine her at the time of trial. Counsel for petitioner made the following proffer during the trial when the trial court was restricting his right of cross-examination:

> " MR. GARCIA: Your Honor, since I was employed in this case soon after April 5th, Mr. Pierce and I, I have been making every effort to locate this woman for the purpose of going out there and to learn the facts and circumstances surrounding this transaction. Every time I went some place, she was gone.
>
> MR. PIERCE: Which is not only our right, but our duty.
>
> MR. GARCIA: That's right. Which we had a right to try to find her for the purpose of interrogating her and learning what the facts and circumstances were, as the Court has held, and the Supreme Court has held of this state, it is our right and duty to do so. Every time I would find out where she might be—I even went to a lawyer that she

knows. He even tried to find her for me. He didn't know where she was living. All he had was a telephone number. And then, he couldn't find her any more. I looked all over. When they issued the subpoena in this case, did they issue it to any address to her? No. Who? In care of Abe Namia. And her mother, in care of Abe Namia. And why and who is he? He is the investigator for the State Attorney's Office. That's why I want to bring it out. Why didn't they want me to see her? Why didn't they accord me the right that the law gives them to interrogate any witness by the power of the subpoena of the office? Why didn't they give me the courtesy of letting me know where she was?

They gave me a list of witnesses here, yes. They gave me a list of witnesses here that you required them to give upon whose testimony the Information was based. Helen Christman. Helen Christman, 46th Street near Thatcher. Helen Christman, 46th Street near Thatcher Glass Company, Tampa, Florida. When did they date that? July 3rd, 1961. Here is this summons, witness supbpoenas, rather, in the file in ths case which is case number 54832, State of Florida vs. Diamante Urga. The original subpoena for witnesses to be and appear in this court room on January 11 at nine o'clock, 1962, to testify in behalf of the State of Florida against Diamante Urga. Helen Christman, in care of Abe Namia. Mary K. Perkins, in care of Abe Namia. Mary K. Perkins being her mother. The rest of them, they identify them and give the address. Down here, Linda Bays, Elton Bays, Police Officers, Sheriff, Deputy S..riff, Eva Mae Daniels. I've got a right to go in there and I think I have got a right to interrogate her and inquire about all this moving around and this summons that is issued to her, the subpoena. Why did they issue it the way they did, in care of Abe Namia? It's quite obvious, your Honor, why they did it. I hate to say this but it's evident. You have got a witness here she is bound

> to have an address, and they said, 'Well, you serve it on Abe Namia.' Who is he? He's the investigator from my office. Why? We don't want nobody to know where she is. We don't want nobody to talk to her. I've talked to witnesses many times about cases, witnesses for the State, and I have that duty and right to do it, but, in this time, I wasn't accorded that right and I want to go in there and find out why she kept moving from place to place and why this subpoena here was served on Abe Namia and it wasn't served on her."

2). Full cross-examination of a witness is an absolute right of the party against whom such witness is called. *District of Columbia v. Clawans,* 300 U.S. 617 (1937); *Alford v. United States,* 282 U.S. 687 (1931); *Sunderland v. United States,* 19 F.2d 202 (8th Cir., 1927); *United States v. Angustine,* 189 F.2d 587, 590 (3rd Cir. 1951); *United States v. Fontana,* 231 F.2d 807, 810-812 (3rd Cir. 1956).

The denial of full cross-examination continues to be a problem of large practical importance in the administration of justice in our courts.

In *Rossi v. United States,* 9 F.2d 362, 366 (8th Cir. 1925), the Court in reversing stated with respect to an important Government witness: "There should be wide latitude allowed in the cross-examination of West under these circumstances."

Petitioner here respectfully submits that under the circumstances that exist in this case there should have been wide latitude allowed in the cross-examination of Helen Christman.

No issue was more crucial in this case than the credibility of Helen Christman. Yet counsel for petitioner was denied the opportunity to bring out on cross-examination matters that would directly have affected her credibility under oath. Add to this denial the inability of counsel, through no apparent fault of theirs, to talk to the witness Helen Christman, or to interview her prior to the trial, and the result is a denial to the petitioner of a fair trial and due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari it is respectfully urged that rehearing be granted and that, upon such rehearing a writ of certiorari issue to the Supreme Court of the State of Florida.

Respectfully submitted,

JOHN PARKHILL
308 Tampa Street
Tampa, Florida
Counsel for Petitioner

Of Counsel:

LAW OFFICES OF FRANK RAGANO

By_____
RAYMOND E. LA PORTE
416 Pierce Street
Tampa, Florida
Counsel for Petitioner.

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that the foregong petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

_____

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of the foregoing Petition for Rehearing have been served by mail upon James W. Kynes, Attorney General State of Florida, Attorney for the Respondent at the Capitol Building, Tallahassee, Florida, this _____ day of November, 1964.

_____

Counsel for Petitioner